

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 11825 of 2023
Somnath Biswas
vs.
State of West Bengal and others

For the petitioner	:	Mr. Tapas Kumar Manna Ms. Anindita Majumder	
			Advocates
For the State	:	Mr. Asish Kumar Guha Mr. Benazir Ahmed	
			Advocates
Heard lastly on	:	30.04.2024	
Judgment on	:	30.04.2024	

Jay Sengupta, J:

This is an application alleging police inaction and seeking further investigation in a case of disappearance of the victim.

Learned counsel for the petitioner submits as follows. The petitioner is the father of the deceased victim. First, despite an order dated 29.08.2022 passed by the learned Additional Chief Judicial Magistrate, Durgapur in MP

Case No.346/2022, Kanksa Police Station did not register an FIR. Even after registration of an FIR, investigation has not been done properly. It is the petitioner's suspicion that the body of the victim given to the petitioner is not that of his son. His son must be alive somewhere. A proper investigation would reveal all these. At the time when the dead body of the victim was shown for the first time to the mother of the victim, she found stark discrepancies. However, the people gathered insisted that the body be cremated. In fact, the petitioner does not know the person who had received the body from the police.

Learned counsel for the State relies on the report filed earlier and submits as follows. As has been submitted earlier, a specific case being NTS PS Case No.147/22 dated 12.09.2022 had been registered in this regard. After recovery of the body, post-mortem was done. Upon identification by the maternal uncle viz Tarak Nath Thakur, the body was handed over to him. The post-mortem report states that the death was accidental in nature. Upon investigation it revealed that on that fateful day i.e., on 13.05.2022 the victim and his friends were celebrating the victim's birthday. At about 11 at night after taking liquor some of the friends including the victim decided to go out on motorcycles. According to the pillion rider, the victim was riding the motorcycle rashly and there was an accident due to reckless driving. The victim suffered more injuries and finally succumbed to the same. The pillion rider suffered less. However, the other vehicle which the motorcycle hit could not be traced. Therefore, a final report was submitted keeping an

option open that if any further evidence came in the case, the case could be reopened.

The first contention of the petitioner is that the dead body of the victim was not of his son. One would wonder as to why then the petitioner had the body cremated as his son's. However, the petitioner has also raised an issue that the person who received the body from the police was not his relative or known to him.

Indeed there are certain facts which apparently show that it could be a case of accidental death while riding a motorcycle like the post-mortem report of the victim, albeit a little illegible, and the statements of the alleged pillion rider and other witnesses who happened to be the friends of the victim.

However, there are also certain flaws and missing links in investigation. First, the mechanical report of the motorcycle apparently does not show that it received any damage. It is surprising indeed that the rider of the motorcycle would receive fatal injuries and the pillion rider at least, some injuries and yet, the vehicle would suffer no damage to that extent. Secondly, the standing truck that the motorcycle allegedly hit was not traced out. Moreover, the investigating officer chose only to examine the victim's friends as witnesses. It is true that the pillion rider and the other witnesses present there would have been the best witnesses. But, there could be others present at the spot including bystanders. There is also no reason as to why the relatives of the victim were not at all examined.

In view of the defects in the investigation as enumerated above, this Court is of the view that the matter should be investigated further.

Therefore, I set aside the final report submitted by the investigating agency and consequential order, if any, and direct the CID to take over the investigation of the case.

Let the further investigation of the case be concluded expeditiously and in accordance with law.

With these observations, the writ petition is disposed of.

Parties shall act on a server copy of this order duly downloaded from the official website of this Court.

(Jay Sengupta, J.)